

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1128**

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**Introduced by Assembly Member Salas**

February 22, 2013

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An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

LEGISLATIVE COUNSEL'S DIGEST

AB 1128, as amended, Salas. Alcoholic beverages: underage drinking.

Existing law provides that every person who purchases any alcoholic beverage for, or furnishes, gives, or gives away any alcoholic beverage to, a person under 21 years of age who thereafter consumes the alcohol and then causes great bodily injury or death to himself, herself, or any other person is guilty of a misdemeanor punishable by a fine of \$1,000 and community service.

This bill would include, in this provision, a person who sells any alcoholic beverage to a person under 21 years of age and would provide that a violation of the prohibition is punishable as a felony. *This bill would provide for an exception from felony prosecution for a retail employee of a licensee, unless the retail employee knew the person to whom the alcoholic beverage was sold was under 21 years of age.* By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 25658 of the Business and Professions  
2     Code is amended to read:  
3     25658. (a) Except as otherwise provided in subdivision (c),  
4     every person who sells, furnishes, gives, or causes to be sold,  
5     furnished, or given away any alcoholic beverage to any person  
6     under 21 years of age is guilty of a misdemeanor.  
7     (b) Except as provided in Section 25667, any person under 21  
8     years of age who purchases any alcoholic beverage, or any person  
9     under 21 years of age who consumes any alcoholic beverage in  
10    any on-sale premises, is guilty of a misdemeanor.  
11    (c) (1) Any person who violates subdivision (a) by selling to,  
12    purchasing any alcoholic beverage for, or furnishing, giving, or  
13    giving away any alcoholic beverage to, a person under 21 years  
14    of age, and the person under 21 years of age thereafter consumes  
15    the alcohol and thereby proximately causes great bodily injury or  
16    death to himself, herself, or any other person, is guilty of either a  
17    misdemeanor or a felony.  
18    (2) *A retail employee of a licensee shall not be subject to felony*  
19    *prosecution under this subdivision for the sale of any alcoholic*  
20    *beverage to a person under 21 years of age unless the retail*  
21    *employee knew the person to whom the alcoholic beverage was*  
22    *sold was under 21 years of age.*  
23    (d) Any on-sale licensee who knowingly permits a person under  
24    21 years of age to consume any alcoholic beverage in the on-sale  
25    premises, whether or not the licensee has knowledge that the person  
26    is under 21 years of age, is guilty of a misdemeanor.  
27    (e) (1) Except as otherwise provided in paragraph (2) or (3),  
28    or Section 25667, any person who violates this section shall be  
29    punished by a fine of two hundred fifty dollars (\$250), no part of  
30    which shall be suspended, or the person shall be required to  
31    perform not less than 24 hours or more than 32 hours of community  
32    service during hours when the person is not employed and is not  
33    attending school, or a combination of a fine and community service  
34    as determined by the court. A second or subsequent violation of  
35    subdivision (b), where prosecution of the previous violation was

1 not barred pursuant to Section 25667, shall be punished by a fine  
2 of not more than five hundred dollars (\$500), or the person shall  
3 be required to perform not less than 36 hours or more than 48 hours  
4 of community service during hours when the person is not  
5 employed and is not attending school, or a combination of a fine  
6 and community service as determined by the court. It is the intent  
7 of the Legislature that the community service requirements  
8 prescribed in this section require service at an alcohol or drug  
9 treatment program or facility or at a county coroner's office, if  
10 available, in the area where the violation occurred or where the  
11 person resides.

12 (2) Except as provided in paragraph (3), any person who violates  
13 subdivision (a) by furnishing an alcoholic beverage, or causing an  
14 alcoholic beverage to be furnished, to a minor shall be punished  
15 by a fine of one thousand dollars (\$1,000), no part of which shall  
16 be suspended, and the person shall be required to perform not less  
17 than 24 hours of community service during hours when the person  
18 is not employed and is not attending school.

19 (3) Any person who violates subdivision (c) shall be punished  
20 by either imprisonment in a county jail for a minimum term of six  
21 months not to exceed one year, by a fine of one thousand dollars  
22 (\$1,000), or by both imprisonment and fine, or as described in  
23 Section 25618.

24 (f) Persons under 21 years of age may be used by peace officers  
25 in the enforcement of this section to apprehend licensees, or  
26 employees or agents of licensees, or other persons who sell or  
27 furnish alcoholic beverages to minors. Notwithstanding subdivision  
28 (b), any person under 21 years of age who purchases or attempts  
29 to purchase any alcoholic beverage while under the direction of a  
30 peace officer is immune from prosecution for that purchase or  
31 attempt to purchase an alcoholic beverage. Guidelines with respect  
32 to the use of persons under 21 years of age as decoys shall be  
33 adopted and published by the department in accordance with the  
34 rulemaking portion of the Administrative Procedure Act (Chapter  
35 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
36 Title 2 of the Government Code). Law enforcement-initiated minor  
37 decoy programs in operation prior to the effective date of regulatory  
38 guidelines adopted by the department shall be authorized as long  
39 as the minor decoy displays to the seller of alcoholic beverages  
40 the appearance of a person under 21 years of age. This subdivision

1 shall not be construed to prevent the department from taking  
2 disciplinary action against a licensee who sells alcoholic beverages  
3 to a minor decoy prior to the department's final adoption of  
4 regulatory guidelines. After the completion of every minor decoy  
5 program performed under this subdivision, the law enforcement  
6 agency using the decoy shall notify licensees within 72 hours of  
7 the results of the program. When the use of a minor decoy results  
8 in the issuance of a citation, the notification required shall be given  
9 to licensees and the department within 72 hours of the issuance of  
10 the citation. A law enforcement agency may comply with this  
11 requirement by leaving a written notice at the licensed premises  
12 addressed to the licensee, or by mailing a notice addressed to the  
13 licensee.

14 (g) The penalties imposed by this section do not preclude  
15 prosecution or the imposition of penalties under any other provision  
16 of law, including, but not limited to, Section 272 of the Penal Code  
17 and Section 13202.5 of the Vehicle Code.

18 SEC. 2. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.